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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5949 of 1988
with
SPECIAL CIVIL APPLICATION No. 3681 of 2001

For Approval and Signature:

Hon'ble MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JIVAN SADHNA RAJASTHAN HINDI VIDYA MANDAL
Versus
STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 5949 of 1988

MR HARIN P RAVAL for Petitioners
MR KB TRIVEDI Addl. Advocate General with
MR VM PANCHOLI AGP for Respondents.

2. Special Civil Application No. 3681 of 2001

MR HARIN P RAVAL for the petitioners
MR KB TRIVEDI Addl. Advocate General with
MR VM PANCHOLI, AGP for Respondents nos. 1 & 2
MR PK JANI for Respondent no. 4
Respondent nos. 3 & 5 - Served.

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 16/10/2001

COMMON JUDGEMENT

Heard the learned advocates.

The petitioner no. 1 in both these petitions is-Shri Jivan Sadhna Rajasthan Hindi Vidya Mandal; a Public Charitable Trust [hereinafter referred to as, `the Trust'] which has established and administers Educational Institutions. The petitioner no. 2 in both these petitions is the Secretary of the petitioner no. 1-Trust. The petitioner no. 3 in Special Civil Application No. 3681 of 2001 is one of the said Educational Institutions - Shree Shikshan Sadhna Stree Adhyapan Mandir [hereinafter referred to as, `the College']. The College imparts Primary Teachers' Certificate training to the girl students in Gujarati medium.

Both these petitions challenge the Government instructions with respect to the admission to the College and the authority of the Government to issue such instructions. Both these petitions are, therefore, with the consent of the learned advocates, decided by this common judgment.

The petitioner no. 1 claims to be a Public Charitable Trust, established by Rajasthani Hindi speaking individuals residing in Ahmedabad for promoting education in Rajasthani Hindi speaking population residing in Ahmedabad. The Trust, therefore, claims itself to be a `minority institution' and asserts its right to administer its educational institutions. The petitioners have also challenged the authority of the National Council for Teachers Education; the respondent no. 4 in Special Civil Application No. 3681 of 2001 in issuing direction to the College to grant admission to the students in accordance with the instructions issued by the said Council. Mr. H.P Raval has, however, upon instructions received, made a statement that, `I do not challenge the applicability of the provisions of the National Council for Teachers Education Act, 1993.' In view of the above statement made by Mr. Raval, the only question remains to be answered is whether the State Government has an authority to issue instructions to the College to grant admissions in accordance with the Government directives.

The petitions are presented on the basis that the Trust and the College are minority institutions. In Special Civil Application No. 5949 of 1988, the petitioners have sought a declaration that the provisions contained in Rule 6 read with Clauses (4) & (5) of Appendix-V of the Gujarat Educational Institutions [Pre-Primary & Primary Teachers' Training Colleges] Rules, 1984 and the Press Note [Annexure-H to the petition] do not apply to the petitioner-Institution. A writ of mandamus is also prayed for for restraining the respondents from enforcing or implementing the provisions contained in the Gujarat Educational Institutions [Pre-Primary & Primary Teachers' Training Colleges] Rules, 1984 in respect of admissions of the students to the College. In Special Civil Application No. 3681 of 2001, the petitioners have prayed for a writ of mandamus to quash the conditions nos. 4, 7, 8 and 10 of the communication dated 9th May, 2001 issued by the Director of Primary Education in respect of admission to the College. Rule 6 provides that, `an educational institution shall admit students in accordance with the provisions contained in Appendix-V'. Appendix-V to the said Rules contains provisions relating to admission in Educational Institutions. Clause (4) thereof provides for the extent of reservation for various categories of candidates. Clause (5) thereof provides that the procedure specified by the Director or by the authorized oficer for admitting the candidates shall be followed by the educational institutions.

As recorded hereinabove, the petitions are presented on the basis that the Trust and the College are the minority institutions. The claim is that the minority institutions have a fundamental right conferred under Article 30 (1) of the Constitution of India, to administer its educational institutions, i.e, the State shall have no authority to interfere with the administration of the Trust and the College. The Government, therefore, could not have issued impugned directions in respect of admissions to the College. However, the very basis on which the petitions are presented is at stake, i.e, the State has denied that the Trust and the College are the minority institutions. If the Trust and the College were the minority institutions, as envisaged under Article 30 (1) of the Constitution of India, the State shall have no authority to interfere with its administration. This proposition of law is not disputed by Mr. K.B Trivedi. The real matter at issue, therefore, is whether the College can be said to be the educational institution established and administered by a

minority as envisaged in Article 30 (1) of the Constitution of India.

Though the petitioners have filed bulky petitions and Mr. Raval has argued the matters at great length, most of it is besides the matter at issue, hence, I shall not deal with the same.

Mr. Raval has primarily relied upon the communication dated 23rd August, 1988 [Annexure-A to Special Civil Application No. 5949 of 1988]. Under the said communication, the State Government has communicated recognition of the Trust as `a minority institution'. It is stated therein that the Trust was established by Hindi speaking people and was administered by Hindi speaking persons. Hence, it was a `linguistic minority institution'. The College was, therefore, recognized as `a minority institution'. Mr. Raval has relied upon communications dated 8th January, 1991 and 1st December, 1998 issued by the District Education Officer, Ahmedabad accepting the fact that the secondary school run by the Trust was a `minority institution'. Mr. Raval has, therefore, asserted that the Trust is settled by a minority and the College is undoubtedly `a minority institution'. He has therefor relied upon the entries made in the Public Trust Register and has also produced the Trust Deed, by filing further affidavit in course of the arguments. He has further submitted that the entries made in the Public Trust Register prove that the trustees and the managers of the Trust initially appointed were all Rajasthani Hindi speaking persons residing at Ahmedabad. He has also relied upon the Trust Deed and has submitted that all these initial trustees and the managers were the native of Rajasthan and had a permanent residence there. The Trust was established for furtherance of education and overall development of Rajasthani Hindi speaking persons residing in Ahmedabad. The Trust and the College are, thus, `minority institutions' which fact has also been accepted by the respondents-authorities until now. It is only in answer to the present petition that for the first time, the State has denied that the Trust and the College are `minority institutions'. Mr. Raval has, therefore, submitted that the impugned conditions contained in communication dated 9th May, 2001 shall not apply to the College. In support of his contentions, Mr. Raval has relied upon the judgments of the Hon'ble Supreme Court in the matters of N. Ammad v. Manager, Emjay High School & Ors., [AIR 1999 SC 50]; of Bihar State Madarasa Education Board, Patna v. Managing Committee of Madarasa Hanfia Arabic College, Jamalia & Ors.,, [AIR 1990 SC 695]; of

Frank Anthony Public School Employees' Association v. Union of India & Ors., [AIR 1987 SC 311]; of D.A.V College, Bhatinda v. The State of Punjab & Ors., [AIR 1971 SC 1731]; of D.A.V College, Jullundur v. The State of Punjab & Ors., [AIR 1971 SC 1737]; of St. Stephen's College v. The University of Delhi, [AIR 1992 SC 1630]; of Rev. Father W. Proost & Ors. v. The State of Bihar & Ors., [AIR 1969 SC 465]; and of Gauhati High Court in the matter of Jugalkishore Kedia & Ors. v. State of Assam & Ors., [AIR 1988 Gauhati 8].

The petitions are contested by the learned Addl. Advocate General Mr. K.B Trivedi. He has denied that the Trust and the College are the `minority institutions' as envisaged in Article 30 (1) of the Constitution of India. He has also challenged the genuineness of the Trust Deed produced by Mr. Raval and has relied upon the judgment dated 19th April, 1975 of the learned Gujarat Secondary Education Tribunal passed in Application No. 32 of 1975. He has submitted that after considering the very Trust Deed, the Tribunal has expressed a doubt about its genuineness. The Tribunal has also held that the Trust is not a `minority institution'. The said judgement had not been challenged further and has, thus, reached the finality. The declaration made by the learned Tribunal has held the field for twenty five years and shall not be interfered with unless the petitioners establish their minority status by leading cogent evidence. He has also relied upon the order dated 2nd September, 1988 made by the State Government withdrawing its earlier order dated 23rd August, 1988. Mr. Trivedi has submitted that prior to 1975 decision referred to hereinabove, the said Tribunal in the year 1974 in Applications Nos. 231 of 1971 and 294 of 1974 had held that the Trust was a `minority institution'. The Trust, alongwith the application for recognition, had relied upon the said judgment of 1974 but had not referred to the later judgment of the learned Tribunal passed in Application No. 32 of 1975. Thus, the communications dated 8th January, 1991 and 1st December, 1998 were secured by the Trust by misrepresentation. He has submitted that the Trust and the College have failed to establish that they are `minority' as averred by them. The petitioners are, therefore, not entitled to the reliefs prayed for by them. Mr. Trivedi has relied upon the judgments of the Hon'ble Supreme Court in the matters of A.P Christians Medical Educational Society v. Government of Andhra Pradesh & Ors., [AIR 1986 SC 1490]; of Re-The Kerala Education Bill, 1957 [AIR 1958 SC 956]; of State of Kerala v. Very Rev. Mother Provincial, [AIR 1970 SC 2079]; of The All Saints High School v. The

Government of Andhra Pradesh & Ors., [AIR 1980 SC 1042]; of St. Stephen's College v. The University of Delhi, [AIR 1992 SC 1630]; of Shahal H. Musaliar & Anr. v. State of Kerala & Ors., [(1993) 4 SCC 112]. Mr. Trivedi has also relied upon the judgments of - the Andhra Pradesh High Court in the matter of Chikkala Samuel v. District Educational Officer, Hyderabad & Anr., [AIR 1982 AP p-64] and of Allahabad High Court in the matter of Shri Gujarati Samaj [Regd.] Kanpur v. The State of U.P & Ors., [AIR 1988 Allh. 244] and of Badraul Hasan Quadiri v. State of U.P & Ors., [1992 All India Educational Cases 210] and of Bombay High Court in the matter of Indulal Hiralal Shah & Ors. v. S.S Salgaonkar & Ors., [AIR 1983 Bombay 192] and of Patna High Court in the matter of Panna Lal Bharatiya & Ors. V. The Magadh University, Bodh Gaya & Ors. [AIR 1976 Patna 82].

Be it noted that the only averment with respect to the minority status of the Trust and the College is found on page 56 of the Special Civil Application No. 3681 of 2001. In paragraph 20 of the memo, the petitioners have said that, `the petitioner no. 1 Trust is established for propagation of Rajasthani Hindi amongst the people'. The Trust Deed produced by Mr. Raval says that the Trust has been settled by one Naranji Kaluramji Verma by settling one property in the Trust. The initial trustees, seven in number, are shown to be the native of Rajasthan. The purpose of settling the Trust is indicated in paragraph 1 of the Trust Deed. It says that the Trust is settled with a view to promoting education for the children of Rajasthani Hindi speaking persons residing in the city of Ahmedabad. The object of the Trust is, inter alia, to develop Hindi culture; to undertake activities for promotion of Hindi culture; to establish educational institutions for Hindi speaking families and for the overall development of Rajasthani community. Paragraph 3 of the said Trust provides, inter alia, for appointment of Trustees who should be the members of Rajasthani community. Mr. Raval has submitted that for an institution to be a `minority institution', the same is not required to be established by many persons ie., a singular individual belonging to a minority may also establish a `minority institution'. By mere induction of persons not belonging to minority institution shall not lose its status of being `minority'. It is also not required that a minority institution shall act for the promotion and development of the language, religion, culture or education for the said community alone. Such institutions are at liberty to offer admission to students not belonging to the said minority. Hence, the Trust and the College are the

minority.

There shall not be any dispute as regards the proposition of law made by Mr. Raval. But, Mr. Raval is required to establish before this Court that the petitioners are `minority' by referring to the facts stated in the petition. As recorded hereinabove, except the singular statement made in the memo of petition and the Trust Deed, the petitioners have not brought any materials on the records of the matter to establish that the Trust and the College are the `minority institutions'. It is, however, not disputed that the College is open for admission to all eligible candidates - whether belonging to the said minority or not; the college imparts PTC training alone. It has no other activity for the preservation or development of the minority culture or furtherance of Hindi language, the education imparted in the College has no nexus whatever with the minority which the petitioners claim to belong to. It appears that earlier a similar issue arose before the learned Secondary Education Tribunal in Applications nos. 231 of 1971 and 294 of 1974 preferred before the Tribunal. On the basis of evidence produced before the Tribunal, it was held that the petitioner-Trust was a minority institution and was entitled to rights conferred under Art. 30 (1) of the Constitution of India. The same issue, once again, arose in Application No. 32 of 1975, referred to hereinabove. The minority status claimed by the petitioners was questioned. Speaking about the conduct of Shri Verma, the then Secretary of the Trust, the learned Tribunal has observed that, `but in this case, I found that the evidence led by Shri Verma before me in that case was not genuine and that Shri Verma had made false statement in that case and even in the present case before me.' The Tribunal called for copies of the Trust Deed from the Office of the District Education Officer as well as that of the Charity Commissioner. The Tribunal found that the two Trust Deeds produced from the custody of the two authorities had material differences. The learned Tribunal has discussed these differences in detail. The veracity of the Trust Deed produced from the custody of the Charity Commissioner was challenged before the Tribunal but the Tribunal held that, `in absence of any concrete evidence showing that Shri Verma had replaced the original copy of the Trust Deed by substituting the present one.. It is not possible for me to give a finding one way or the other. It is for the Deputy Charity Commissioner to make necessary inquiry in this connection, if deemed necessary.' On perusal of the Trust Deed produced from the custody of the District Education Officer, the

learned Tribunal held that, the trustees nos. 3 to 7 were Gujaratis and none of the trustees were shown to be native of Rajasthan. The preamble of the Trust Deed produced from the office of the Deputy Charity Commissioner indicated that the Trust was being settled by Rajasthani Hindi speaking persons for the preservation and development of Rajasthani culture or Hindi language. While referring to the Trust Deed lodged in the office of the District Education Officer, the learned Tribunal has observed that, `the preamble of the Trust suggests that the same was settled for promoting secondary education for the children residing in the Bapunagar area of Ahmedabad city.' Even dealing with the objects of the Trust, the learned Tribunal has found that the Trust was settled for the general development of the people residing in the said area. There were several other discrepancies in material parts which have been adverted to by the learned Tribunal. Considering the evidence produced before it, the learned Tribunal held that, `..the result is that the present institution has not so far been declared to be a minority institution by the Board or by the Government. In the absence of any such declaration that this institution was an educational institution established and administered by a minority whether based on language or religion, I hold that this institution is not a minority institution. No evidence has been lead by Shri Verma by examining other trustees to show that they were residents of Rajasthan. On the contrary, as stated earlier from the copy of the trust deed produced before me from the record of the office of the D.E.O, it transpires that most of the trustees are residents of Gujarat. It is, therefore, difficult for me to hold that this institution is a minority institution based on religion or language. Thus, even though in Application No. 231 of 1971 and 294 of 1974, from the record which was produced before me then, I held that this was a minority institution, but today from the record, which is produced before me I hold that this is not a minority institution based on language or religion. It cannot therefore be exempted from the operation of the provisions of the present Act as provided in section 40 (a) of the Act.'

The above declaration made by the Tribunal has reached finality and has remained in force till the date. There is no material on the records of the present petitions which should enable me to upset the said finding. The record is tacitly silent about how the admissions are given in the College or which category of students are given such admission. It would not be out of place to mention here that in answer to Special Civil

Application No. 3681 of 2001 - one Gangaram Patel, the then District Education Officer at Ahmedabad and at present, Secretary in the Gujarat Secondary Education Board has filed an affidavit. He has stated that the communication dated 1st December, 1998 was issued by him relying on the communication dated 8th January, 1991. He has stated that the communication dated 10th March,1999 was issued pursuant to the proposal made by the petitioner no. 2 on 5th March,1999. The judgment of the learned Tribunal rendered in Application No. 32 of 1975 was not referred to in the said proposal. The petitioner no. 2, though a Secretary in the Trust, had described himself as Sanchalak [the Managing Trustee]. Hence, it is apparent that the said communications have been secured by the petitioners by suppressing the material facts from the authorities concerned, and by misrepresentation.

Even otherwise, no minority institution requires to be recognized as such by the Government authorities. The status of `minority' of an institution is not dependant upon its formal recognition by the Government. Every institution has to establish its minority status by providing cogent materials on the records. Mr. Raval has vehemently argued that the copy of Trust Deed obtained from the office of Charity Commissioner is a public document within the meaning of Section 74 of the Indian Evidence Act, 1872 and is admissible in evidence. There cannot be a dispute to the proposition advanced by Mr. Raval. However, admissibility of a document cannot be equated with that of its probative value. In view of the challenge to the genuineness of the said Trust Deed, the same cannot be relied upon. The claim of an Institution of being a `minority institution' is required to be tested on the touchstone of the law pronounced by the Hon'ble Supreme Court and the High Courts over the years. I must say that the petitioners have not brought forth any material facts to which the law settled by the Hon'ble Supreme Court and the High Courts in the above referred judgments can be applied to.

I, therefore, hold that neither the Trust nor the College is `minority institution' as envisaged in Article 30 (1) of the Constitution of India. They are susceptible to the directions and instructions issued by the State Government. The College is required to grant admissions in accordance with the centralized admission system adopted by the State Government.

In support of his contention, Mr. Trivedi has produced the original application for recognition made by

the Trust on 25th May, 1988. In the said application, the Trust has referred to the judgment of the learned Secondary Education Tribunal, delivered in Applications nos. 231 of 1974 and Appeal No. 294 of 1975 which actually was reversed in the subsequent judgment dated 19th April, 1975. The factum of the said judgment dated 19th April, 1975 passed in Application No. 32 of 1975 has been suppressed from the concerned authority. Mr. Raval has relied upon Application dated 5th March, 1999 made to the Gujarat Secondary Education Board for recognition of the Secondary School run by the Trust as a `linguistic minority' and the communication dated 10th March, 1999 issued by the said Board recognizing the Trust as `a linguistic minority' institution. Neither of the said documents is produced on the records of the matter. Mr. Raval has contended that irrespective of the earlier application and the order made thereon, and pending the petition, the petitioner had made application for recognition afresh. He has strenuously urged that all throughout, the respondent authorities have considered the College to be a `minority institution' and the Trust has enjoyed the status of `minority' all along. I see no substance in this contention either. Whether the Trust can be said to be a minority or not has to be decided on the facts of the case, keeping in view the prevailing law and there cannot be a promissory estoppel/estoppel against the operation of law.

Further, Mr. Raval agrees that the College has been receiving grant-in-aid from the State Government since the year 1988. However, though for the first five years, the College had received token grant of Re. 1 per year. In that view of the matter also, in view of the judgment of the Hon'ble Supreme Court in the matter of St. Stephen's College [Supra], the College is duty bound to admit the students as is being granted by the other colleges. The Hon'ble Supreme Court in paragraph 127 of the said judgment has held that, `..if such institution gives preference or makes reservations for the candidates belonging to its own religion, then it is bound to cause inequality and discrimination with a candidate belonging to another religion and it would be a denial of admission on the ground of religion and would be hit by Art. 29 (2). The right conferred under Art. 30 is a general right granted to all minorities, but if any educational institution established and administered by such minority also gets the benefit of grant-in-aid out of the State funds then it has to fall in line equally with other educational institutions in the matter of admitting students in such institution and cannot prefer or reserve any seats for students of its own religion.' The

provision contained in Article 29 (2) of the Constitution of India reads as under :-

29. Protection of interests of minorities -

(1) xx xx xx xx xx

(2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

The above law propounded by the Hon'ble Supreme Court shall apply to the petitioners also which claim to be a `linguistic minority'.

Therefore also, even if the College were declared `minority institution', in the matter of admission it shall fall in line with other such colleges. The petitioners are duty bound to give admission to the College in accordance with the procedure specified by the Director, or as the case may be, authorised officer. The impugned communication dated 9th May, 2001 has obviously been issued on the premise that the College is a minority institution. Under the said communication, the College has been instructed, inter alia, to grant admission to the students belonging to the linguistic minority candidates alone, in order of merit. As I have held that the College is not an institution established and administered by a minority, in respect of admissions, the College shall fall in line with other such colleges, the instructions contained in the impugned communication dated 9th May, 2001 shall become inapplicable. Further, the provisions contained in Appendix-V, including Clauses (4) & (5) thereof of the Gujarat Educational Institutions [Pre-Primary & Primary Teachers' Training Colleges] Rules, 1984, shall apply to the College. The said communication has thus become redundant.

In view of the above discussion, both the petitions are dismissed with costs. Rule nisi issued in each of the petitions is discharged with costs. It is more than apparent that all along, the petitioners have suppressed the judgment of the Secondary Education Tribunal dated 19th April, 1975 delivered in Application No. 32 of 1975 from the concerned authorities. Instead, the petitioners have pressed judgment of the learned Tribunal dated 17th January, 1975 rendered in

Applications Nos. 231 of 1971 & 294 of 1974, which was reversed by the above referred judgment dated 19th April, 1975, in service. The petitioners have secured the orders recognizing the Trust as a `miniority' and the educational institutions run by it as `minority institutions' by suppressing the material facts and misrepresentation. The petitioners have thus perpetrated fraud upon the concerned authorities as well as the Tribunal. The petitioners have suppressed these facts from this Court also. In neither of the petitions, the petitioners have referred to the above referred judgment dated 19th April, 1975 of the Tribunal. The petitioners are thus guilty of gross acts of suppressio veri and suggestio falsi. Such litigants are required to be discouraged. The petitioners do deserve imposition of exemplary costs hereof. The costs to the respondents nos. 1 & 2 in Special Civil Application No. 3681 of 2001 is quantified at Rs. 20,000/=. The said respondents shall be at liberty to recover the amount of costs from the amount of grant that may be admissible to the College.

At the request of the learned advocate Mr. Raval, the interim orders operating pending this petition shall continue to operate till 30th October, 2001.

[Ms. R.M Doshit, J.]

Prakash*